

HAROLD M. JAFFE, ESQ.

CASB #57397

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Attorney for Defendants JOHN SRAMEK and BERNADETTE SRAMEK, individually and as Trustees of the John S. Sramek, Jr. and Bernadette D. Sramek Revocable Living Trust and Harold M. Jaffe, In Pro Per

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ALISE MALIKYAR and ROBERT E. JACOBSEN, CASE NO. C07-03533 WHA

Plaintiffs,

vs.

**DEFENDANTS' EX PARTE APPLICATION
TO STRIKE PLAINTIFF'S THIRD AMENDED
COMPLAINT; MEMORANDUM OF POINTS
AND AUTHORITIES**

JOHN SRAMEK, BERNADETTE
SRAMEK, HAROLD M. JAFFE, John S.
Sramek, Jr. and Bernadette D. Sramek
Revocable Living Trust, and DOES 1 -
100,

Defendants.

CTRM: 9 - Hon. William Alsup

I, HAROLD M. JAFFE, declare:

1. I am an attorney at law duly licensed to practice in all courts of the State of California and am attorney of record for defendants, JOHN SRAMEK ("J. SRAMEK"), BERNADETTE SRAMEK ("B. SRAMEK"), HAROLD M. JAFFE ("JAFFE"), in pro se, and John S. Sramek, Jr. and Bernadette D. Sramek Revocable Living Trust ("the SRAMEK TRUST") (or hereinafter collectively referred to as "defendants"), herein.

2. The matters stated herein are within my own personal knowledge and if called as a witness I could and would competently testify thereto. Your declarant is making this declaration in support of defendants' ex parte application to strike plaintiffs' third amended complaint for failure to comply with this Court's Minute Order of July 3, 2008, that plaintiffs, ALISE MALIKYAR ("MALIKYAR") and ROBERT E. JACOBSEN ("JACOBSEN") file an amended complaint by August 15, 2008 (Docket No. 91).

4. August 15, 2008, came and went, but no amended complaint was filed, nor was leave sought to enlarge the time to file an amended complaint. On August 20, 2008, the undersigned's office received electronic notice from the Court stating that a document denominated as a third amended complaint had been manually filed on August 19, 2008 (Docket No. 99), no electronic version being available.

5. Thereafter, on August 20, 2008, this office received a further electronic notice from the Court stating that a Clerk's Notice Re: Failure to E-File and/or Failure to Register as an E-Filer was filed (Docket No. 100).

6. Further, as of today, August 22, 2008, defendants have not been served with a copy of the third amended complaint.¹

7. Therefore, defendants are filing this ex parte application to strike the “third” amended complaint (Docket No. 99), or in the alternative, if the Court allows the filing of the third amended complaint, defendants request that the time set for the defendants to respond to the “third amended complaint” be no less than 20 days from the date the third amended complaint is served on defendants through the undersigned’s office.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and this declaration is executed on August 22, 2008, at Oakland, California.

/s/
HAROLD M. JAFFE

¹ Like the Second Amended Complaint filed on January 31, 2008, this document would be incorrectly denominated, because there previously has only been filed two complaints, to wit: the original and one denominated as a second amended complaint. No first amended complaint having been filed at any time.

MEMORANDUM OF POINTS AND AUTHORITIES

No amended complaint having been filed or served on defendants within the time provided for by this Court's order, and no request for an enlargement of time to file an amended complaint having been timely filed, nor was an enlargement of time granted, the defendants request that this Court enter an order striking the document denominated *third amended complaint*, manually filed on August 19, 2008 (Docket No. 99), and that the operative complaint be deemed the document filed on January 31, 2008 denominated as a *Second Amended Complaint* (Docket No. 66).

Respectfully submitted,

DATED: August 22, 2008

By: /s/
HAROLD M. JAFFE, ESQ., Attorney for
Defendants